

UNITED STATES TAX COURT
WASHINGTON, DC 20217

CHARLES A. SISSON & MARALEE M.)	KVC
SISSON,)	
)	
Petitioners,)	
)	
v.)	Docket No. 16614-09.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

The petition commencing the above-docketed matter was filed on July 9, 2009, seeking redetermination of a notice of deficiency issued to petitioners with respect to the taxable years 2005, 2006, and 2007. At the time the petition herein was filed, petitioner Charles A. Sisson was a party to an ongoing bankruptcy proceeding under 11 U.S.C. Chapter 11, initiated June 23, 2006. The existence of the bankruptcy proceeding and the consequent provisions of the automatic stay under 11 U.S.C. section 362(a) led to the dismissal of the instant case as to Charles A. Sisson as to 2005 only on August 17, 2010, and the case was thereafter calendared for trial at the session of the Court scheduled to begin on February 28, 2011, in St. Paul, Minnesota.

When the case was called on February 28, 2011, and recalled on March 3, 2011, there was no appearance by or on behalf of petitioners. Respondent appeared and on March 3, 2011, filed a Motion To Dismiss for Lack of Prosecution. The Court granted respondent's motion by Order of Dismissal and Decision entered March 9, 2011.

Subsequently, on April 6, 2011, the Court received from petitioners a document entitled a "Motion To Vacate or Revise Tax Court Decision". That document was returned to petitioners unfiled on account of an improper title and other procedural irregularities. An attempted correction, along with a corresponding motion for leave to file out of time, received May 12, 2011, was likewise returned unfiled for further procedural irregularities.

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Then, on June 22, 2011, the Court received from petitioners and filed a Motion for Leave To File Motion To Vacate or Revise Order of Dismissal and Decision Dated March 9, 2011 Out of Time. The motion was made under Rule 162 of the Tax Court Rules of Practice and Procedure. The accompanying Motion To Vacate or Revise Order of Dismissal and Decision Dated March 9, 2011 for Docket No. 16614-09 was lodged simultaneously. Over the ensuing six months, petitioners lodged four supplemental motions to vacate or revise, the latter two of which were accompanied by motions for leave to file. Respondent filed an objection to petitioners' June 22, 2011, motion for leave on September 23, 2011.

By Order dated January 3, 2012, the Court denied petitioners' June 22, 2011, motion for leave to file, as well as their motion for leave to file a third supplemental motion. Petitioners' motion for leave to file a fourth supplemental motion was denied the same date by separate Order. The Court's March 9, 2011, Order of Dismissal and Decision had become final on June 7, 2011, pursuant to sections 7481 and 7483 of the Internal Revenue Code (I.R.C.).

Petitioners appealed the Court's March 9, 2011, Order of Dismissal and Decision and the January 3, 2012, Order denying their June 22, 2011, motion for leave to the United States Court of Appeals for the Eighth Circuit. In an opinion and judgment dated November 7, 2012, the appellate court vacated this Court's January 3, 2012, Order and remanded "with directions to file the Sissons' Rule 162 motion with a docket filing date of April 6, 2011, and to consider the merits of the motion." The mandate to that effect was issued to the Tax Court on January 7, 2013, and filed in the instant docket on January 14, 2013.

Upon due consideration of the appellate Court's mandate and record in this proceeding, it is

ORDERED that the Clerk of the Court is directed to file nunc pro tunc as of April 6, 2011, petitioners' Motion To Vacate or Revise Order of Dismissal and Decision Dated March 9, 2011 for Docket No. 16614-09, lodged June 22, 2011. It is further

ORDERED that petitioners' Motion To Vacate or Revise Order of Dismissal and Decision Dated March 9, 2011 for Docket No. 16614-09 is granted, and the Court's Order of Dismissal and Decision entered March 9, 2011, is hereby vacated and set aside. It is further

ORDERED that respondent's Motion To Dismiss for Lack of Prosecution is denied. It is further

ORDERED that, on or before May 9, 2013, petitioners shall file a Motion To Change Place of Trial if they no longer request St. Paul, Minnesota, as their place of trial.

(Signed) Michael B. Thornton
Judge

Dated: Washington, D.C.
April 18, 2013